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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,997	01/16/2004	Michael Nyle Hershberger	P155	7917

27752 7590 09/20/2007
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EXAMINER

SCHLIENTZ, NATHAN W

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

09/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/758,997	HERSHBERGER, MICHAEL NYLE
	Examiner	Art Unit
	Nathan W. Schlientz	1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 January 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-39 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) _____ is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) 1-39 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application
 6) Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, 15-27 and 34-38, drawn to a liquid composition comprising a medicament, a flavorant and water, as well as a kit housing said composition, classified in class 424, subclass 442 and 151.1.
- II. Claims 9-14 and 28-33, drawn to a method of treating a condition comprising orally administering a composition according to Invention I, classified in class 514, subclass 875.
- III. Claim 39, drawn to a process for manufacturing a liquid composition comprising admixing a medicament, a flavorant and water followed by sterilization at 170 to 240 °F, classified in class 424, subclass 442.

The inventions are distinct, each from the other because of the following reasons:

1. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case several of the medicaments listed in claims 6-7 can also be used as agricultural pesticides, such as

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imidacloprid¹, nitenpyram², lufenuron³, and fipronil⁴, or as an insecticide in the treatment for ants, cockroaches and termites, such as fipronil⁵.

2. Inventions I and III are related as product made and process of making. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made without sterilization from about 170 °F to about 240 °F.

3. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the process of making a composition and the process for treating a condition are materially different in design, modes of operation, and effects.

4. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction were not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

¹ Bull. Environ. Contam. Toxicol. (1996) 56:29-36.

² British Journal of Pharmacology (2000) 130:981-986.

³ J. of Exp. Zoology (1997) 278:37-44.

⁴ Proc. Natl. Acad. Sci. USA (1996) 93:12764-12767.

⁵ J. Econ. Ent. (2003) 96:461-467.

Election of Species

With respect to the invention of Group I, this application contains claims directed to the following patentably distinct species: the compounds listed in claims 6-8. The species are independent or distinct because they have materially different designs and effects. For example, some of the compounds are ectoparasiticides while others are anthelmintics. Ectoparasiticides are used to treat an animal for infestation of external parasites such as fleas and ticks, whereas anthelmintics are used to treat an animal for internal parasitic worms such as intestinal worms. Therefore, a search of the literature for a composition used to treat fleas and ticks will not be the same as a search of the literature for a composition used to treat worms.

With respect to the invention of Group II, this application contains claims directed to the following patentably distinct conditions: flea/tick conditions, heartworm conditions, bacterial conditions, and viral conditions. The conditions are independent or distinct because they have materially different modes of operation. For example, the search for treating a viral condition will not be the same as a search for flea and tick conditions.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species and a single disclosed condition for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 6-8 and 25-27 are generic to the patentably distinct species, and claims 10 and 29 are generic to the patentably distinct conditions.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims

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readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

Telephonic Inquiry

A telephone call was made to Cynthia L. Clay, Esq. on 14 September 2007 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

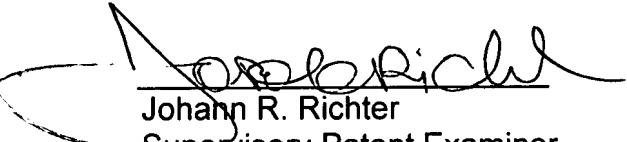
Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan W. Schlientz whose telephone number is 571-272-9924. The examiner can normally be reached on 8:30 AM to 5:00 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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